

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4441 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NATIONAL TEXTILE CORPORATION (GUJARAT) LTD.

Versus

MAHALAXMI MILLS LTD.

Appearance:

MR ASHOK L SHAH for Petitioner
NOTICE NOT RECD BACK for Respondent No. 1
UNSERVED for Respondent No. 2
MR HJ BHATT for Respondent No. 3
SERVED for Respondent No. 4

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 20/06/96

ORAL JUDGEMENT

Heard learned counsel for the parties. The respondent, Mahalaxmi Mills Limited, being a sick textile undertaking, was nationalised under the provisions of Sick Textile Undertakings (Nationalization) Ordinance,

1974, followed by the Sick Textile Undertakings (Nationalization) Act, 1974, (hereinafter referred to as "the Act") and all rights, title and interest of the said mill stood transferred to and vested in the National Textile Corporation Ltd. The National Textile Corporation Ltd. formed its subsidiary, National Textile Corporation (Gujarat) Ltd., and all rights, title and interest in the said Mill were transferred to the said subsidiary company and they stood transferred with effect from 1.4.1974. Under Sec.19 of the Act, the National Textile Corporation was entitled to make a claim before the Commissioner of Payments with regard to every payments made by the Custodian, which means Gujarat State Textile Corporation, after 1.4.74 but before 21.9.74. It is the case of the petitioner that the Custodian made various payments for bills discounting facilities from the respondent No.3, Bank. The total of such payments amounted to Rs.13,75,302.52. The petitioner filed its claim application No.64 of 1977 before the Assistant Commissioner of Payments. In the aforesaid claim application, claim in respect of the bills discounting facilities from respondent No.3 was made at Sr.No.882. It is the case of the petitioner that the Assistant Commissioner of Payments at Ahmedabad, while considering the claim of the petitioner as claimed under the application No.64 of 1977, decided that he would consider the claim of the petitioner at Sr.No.882 at the time when he considers the claim of State Bank of Saurashtra, the respondent No.3 in this case. The petitioner stated that this course has been suggested by the Assistant Commissioner of Claims, Ahmedabad, because the said bank also may have claimed the aforesaid amount and it would be better to consider both the claims together. It is not in dispute that the bank, respondent No.3 herein had not preferred any claim in respect of the said bill discounting facilities. At the time of considering the claim of the bank, the Assistant Commissioner of Payments, through oversight, did not consider the claim of the petitioner regarding the bill discounting facilities as claimed at Sr.No.882 of the claim application No.64 of 1977. While the Assistant Commissioner of Payments, Ahmedabad, was considering the category IV claim of the Bank, respondent No.3, the petitioner made an application to the Assistant Commissioner of Payments that its claim in respect of Sr.No.882 which was through oversight left unconsidered, be considered and decided on merits. The Assistant Commissioner of Payments, Ahmedabad, under its order dated 28th March, 1979, dismissed the aforesaid application of the petitioner. Dissatisfied with the aforesaid order of the Assistant Commissioner of

Payments, the petitioner has taken up the matter to the Appellate Court, here, District Court, Bhavnagar. The Appellate Court also rejected the appeal of the petitioner. Hence this special civil application before this Court by the petitioner.

2. Though the learned counsel for the petitioner made manifold submissions in support of this special civil application, but looking to the fact that this application is to be accepted only on one ground, it is not necessary to detail all the submissions, and to decide the same on merits. The Appellate Court dismissed the appeal preferred by the petitioner on the ground that the order dated 28th March, 1979, passed by the Assistant Commissioner, Payments, Ahmedabad, is not an original order but an order under which the application of the petitioner for review of its earlier decisions is made by the said authority and as such it is not an appeal u/s.23(7) of the said Act.

3. The Assistant Commissioner of Payments, under its order dated 28th March, 1979, rejected the application of the petitioner on the ground that though specifically the claim of the petitioner made at Sr.No.882 in the claim application No.64 of 1977 has not been considered on merits, but in the facts of the case, it is presumed to have been rejected. It has further been held that the appropriate course for the petitioner would have been to file an appeal against the deemed rejection of the aforesaid claim and not this application. I do not consider it to be appropriate to go on the questions whether it is a deemed rejection of the claim of petitioner or not and whether an appeal against the order passed on the application of the petitioner is maintainable or not.

4. The Assistant Commissioner of Payments under his order dated 28th March 1979 made the following observations.

N.T.C. if advised may move this tribunal for re-opening of their claim application requesting to consider the claim of bills discounting system as dues falling in Category I and to permit them to file the affidavit and then to lead evidence. They may also request this authority for considering the claim and then to pass an additional award for the dues falling in Category I and but the present application deserves to be rejected on merits.

Though the application of the petitioner has been rejected, but the Assistant Commissioner of Payments, Ahmedabad, has given an opportunity to the petitioner to move an application for re-opening of the claim application in the form of request to consider the claim of bill discounting facilities as dues falling in Category I. In view of this, this writ petition is disposed of with directions to the petitioner and to the Assistant Commissioner, Payments, as under:

5. The petitioner, if so advised, may move the Assistant Commissioner, Payments, Ahmedabad, by an application for re-opening of their claim application relating to category I at Sr.No.882 in application No.64 of 1977. In case such an application is moved by the petitioner, it is hereby ordered that the Assistant Commissioner, Payments, Ahmedabad, will decide the same on merits after giving all the concerned parties an opportunity of filing affidavits and evidence. Rule is made absolute in the aforesaid terms with no order as to costs.

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(sunil)